

Randy and Cheryl Gilchrist

292800

3010 Lake Keowee Lane
Seneca, SC 29672

July 13, 2020

The Honorable Jocelyn G. Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RECEIVED

JUL 15 2020

PSC SC
MAIL / DMS

Re: Randy and Cheryl Gilchrist v. Duke Energy Carolinas, LLC
Docket No. 2020-147-E

Dear Ms. Boyd:

Enclosed for filing please find Randy and Cheryl Gilchrist's Objection to Defendant Duke Energy Carolinas, LLC's Motion to Dismiss and plaintiff's Demand for Hearing. By copy of this letter we are serving the same on the parties of record.

Sincerely,

Randy Gilchrist
Cheryl Gilchrist
Randy and Cheryl Gilchrist

Cc: Duke Energy via Attorneys for Duke Energy Carolinas, LLC via U.S. mail at
Robinson Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, SC 29211
Alexander W. Knowles, Esq., Office of Regulatory Staff of South Carolina, via email
Carri Grube Lybarker, SC Dept. of Consumer Affairs, Counsel, via email
Roger P. Hall, SC Dept. of Consumer Affairs, Counsel, via email

Enc.: Objection and Demand for Hearing

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-147-E

IN RE:

Randy and Cheryl Gilchrist, Complainants/Petitioners, v. Duke Energy Carolinas, LLC's Defendant/Respondent.]]]]]]]]]]]]	Randy and Cheryl Gilchrist's Objection to Defendant Duke Energy Carolinas, LLC's Motion to Dismiss and Plaintiff's Demand for Hearing
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Plaintiffs, Randy and Cheryl Gilchrist, object to the Motion to Dismiss of Defendant Duke Energy Carolinas, LLC, (hereinafter "DEC" or "Company") on the following grounds:

The purpose of any government agency, commission, or administrative law proceeding is the protection of persons and property. A hearing in this case is necessary for the protection of substantial rights, and is therefore in the public interest. Dismissal of the plaintiff's petition without a hearing is not appropriate under South Carolina Code Ann. § 58-27-1990.

FACTS OF THE CASE

The plaintiffs had repeatedly informed DEC that they did not consent to the installation of any meter capable of capturing data other than what is necessary to bill for services rendered. We repeatedly informed the Company that we were refusing the installation of a smart meter for the following reasons:

a) the meter collects personal, private data that is not necessary to determine the amount of electricity used for billing purposes, and b) residents of the home have medical conditions that could be exacerbated by the smart meter.

The plaintiffs repeatedly informed the Company that they in fact have a right to privacy and that the Company did not obtain their consent for the installation of this meter, and proceeded to threaten plaintiffs with disconnect of their power if they did not comply with the Company's demands. Plaintiffs also informed the Company that they were not required to Opt-Out because the Company was engaging in unlawful activity.

ARGUMENT

DEC claims that they have not violated any applicable statute or regulation for which the Commission can grant relief, claiming that a hearing in this case is not in the public interest or for the protection of substantial rights. The plaintiffs vehemently disagree and submit the following:

- 1) Insurance companies have devices that monitor and collect data on the activities of the driver of a vehicle. They can offer discounts for the consent of the driver in order to have these devices placed in their vehicle. They can claim all the benefits that the driver might receive should the driver accept the offer. They cannot, however, refuse to provide insurance if the customer declines their offer.
- 2) Law enforcement cannot place monitoring devices on a home or a car without first presenting probable cause to a judge and obtain a court order for the placement of such a device.

The issue is not about whether DEC is a state actor. The issue is whether DEC can hide behind regulations/statutes to commit unlawful acts. The issue is also whether the Commission, the Public Utilities Commission of South Carolina (hereinafter the “PUC”) has in fact authorized DEC to commit these unlawful acts. The plaintiffs contend that regulations promulgated by the PUC do not in fact authorized or excuse illegal activity.

The constitutions of both the United States of America and the State of South Carolina protect the privacy of the individual. Both of the above examples, insurance companies and law enforcement, are prohibited from collecting personal, private data without first obtaining either consent or court order upon probable cause. The Company is required to do the same; they must obtain a customer’s consent to install these devices (smart meters) and they cannot penalize or refuse to provide service to customers who do not consent.

The Company did in fact trespass (a Common Law tort) when they entered the plaintiff’s property and installed the smart meter over the plaintiff’s objections. First, the Company cites S.C. Code Ann. Regs. 103-344, which provides that “[a]uthorized agents of the electrical utility shall the right of access to premises supplied with electric service ... and for any other purpose which is proper and necessary in the conduct of the electrical utility’s business.” The plaintiffs contend that the purpose was neither proper nor necessary in order to provide electric service.

The above examples of insurance companies and law enforcement demonstrate that the plaintiff’s objections to the violation of the right to privacy, which these meters represent, are neither vague nor unspecified. The Company’s assertion that

the complainants' privacy assertions can only be asserted against state actors is not the issue here. The issue here is that a state agency (the PUC) that regulates the Company (DEC) is in existence to hear complaints of the Company's unlawful activities and to step in and correct the situation.

CONCLUSION

Again, it is the duty – and even the reason for the existence – of the PUC to protect the persons and property of the people of the State of South Carolina from reckless and unlawful activities that may be engaged in by the companies they regulate. As the Company admits, on page 6 of their motion to dismiss, "...there is no state law requiring the installation of smart meters". There exists no state law because it would be ruled unconstitutional. Every state and every administrative law court, and every government agency, federal and state down to city and county government is bound by the Federal and State Constitutions. The plaintiffs complaint and request for a hearing in this case is in fact in the public interest and for the protection of substantial rights. These substantial rights include the Fourth Amendment to the U.S. Constitution which protects the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.

The following cases are relevant to the substantial rights involved in this case: *Miranda v. Arizona*, 384 U.S. 436, 491: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Gomillion v. Lightfoot*, 364 U.S. 155 (1966), cited also in *Smith v. Allwright*, 321 U.S. 644, 649:

“Constitutional ‘rights’ would be of little value if they could be indirectly denied.”

Davis v. Wechsler, 263 US 22, at 24: “The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.”

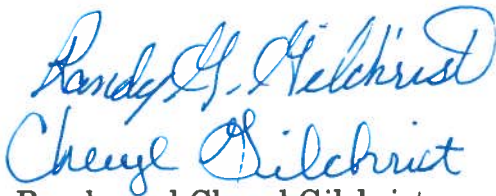
Hertado v. California, 110 U.S. 516: “The State cannot diminish rights of the people.”

Because the PUC is charged with regulating the activities of DEC, plaintiffs believe and have shown that the Company is engaged in activities that are actionable under the Common Law, as well as Statutory Law. These are substantial rights that the PUC is charged to protect, and it is therefore in the public interest that this complaint be heard.

WHEREFORE, the plaintiffs demand that DEC’s Motion to Dismiss be denied and a hearing be scheduled as soon as reasonably possible, and request such other relief as the Commission deems just and proper.

Dated July 13, 2020

Respectfully submitted,



Randy and Cheryl Gilchrist
3010 Lake Keowee Lane
Seneca, SC 29672

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-147-E

IN RE:

**Randy and Cheryl Gilchrist,
Complainants/Petitioners,**

y.

**Duke Energy Carolinas, LLC's
Defendant/Respondent.**

CERTIFICATE OF SERVICE

This is to certify that I, Randy Gilchrist, one of the plaintiffs in this case, have served upon the persons named below our Objection to Defendant Duke Energy Carolinas, LLC's Motion to Dismiss and Plaintiff's Demand for Hearing by electronic mail or by depositing in the U.S. Mail, addressed as follows:

Alexander W. Knowles, Counsel
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aknowles@ors.sc.gov

**The Honorable Jocelyn G. Boyd
Chief Clerk / Executive Director
Public Service Commission of
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Attorneys for Duke Energy Carolinas LLC

Dated July 13, 2020

Randy Gilchrist
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